IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 249 OF 2005

Shri Jackson Dadel,
aged about 25 years,
r/o Datta apts., Bhatlem,
Panaji-Goa, presently in
Judicial Custody at Sub Jail
Sada, Vasco-Da-Gama, Goa.
(Through his next friend/
mother Smt.Malti Dadel) ... Applicant

versus

State,
Through the Public Prosecutor. ... Respondent

Mr. S. G. Bhobe, Advocate for the Applicant.

Ms. W. Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 3RD MARCH, 2006.

ORAL ORDER

Heard Mr. S. G. Bhobe, the learned Counsel for the applicant and Ms. W. Coutinho, the learned Public Prosecutor for the respondent.

2. The applicant herein is the first accused who along with seven others, out of which two are still absconding, namely, A-7/Joao and A-8/Mithun are being prosecuted in Sessions Case No.22/2005 with the allegation that on 23-4-2005 at about 21.30 hours, in furtherance of common intention committed criminal trespass into the flat of Shri Ivon De Lemos and assaulted deceased Godwin D'Silva aged about 25 years, with beer bottles, broken glass, knife and sharp instruments thereby causing his instant death on the spot, under Sections 449, 302 r/w 34 I.P.C.

3. The application for bail filed by the applicant/A-1 came to be rejected by the learned IInd Additional Sessions Judge by Order dated 19-9-2005. Charge has already been framed against the accused nos.1 to 6 and the trial is pending. Since the incident took place in the flat of the said Ivon De Lemos at Caranzalem, it appears that the said Ivon De Lemos is the only eye witness of the prosecution and who is yet to be examined in the trial in the said Sessions Case No.22/2005.

4. The said Ivon De Lemos lodged the FIR at about 01.00

hours of 24-4-2005. However, prior to that at about 12.30 a.m. of 24-4-2005 the applicant herein had proceeded to the Goa Medical College and had got himself examined and as the hurt certificate shows, the applicant/A-1 had an incised looking wound on the upper part of the left arm of 5x3x1 cms., caused by a sharp weapon and as per the history given by the applicant/A-1, and as recorded on the hurt certificate the said incised looking wound was received by the applicant/A-1 on account of being assaulted by knife. The applicant did not name his assailant since the name of the assailant is not seen recorded on the said hurt certificate.

5. In the course of investigations, statements of A-5/Prasad and A-6/Manjunath came to be recorded under Section 164 of the Code of Criminal Procedure, 1973. In the said statements, both the said accused have stated that A-2/Rudolf and A-7/Joe came back in the shack and told them they would go to the house of the said Ivon De Lemos to assault Godwin (deceased) and the said A-2/Rudolf and A-7/Joe were abusing and giving bad words to the said Godwin(deceased) and they left

the shack and proceeded to Caranzalem and the applicant/A-1 told them that they will proceed to Caranzalem in order to stop the fight at Caranzalem, if any. The said two accused namely, A-2/Rudolf and A-7/Joe have not attributed any acts to themselves in the attack against the deceased but have tried to explain the injury caused to the applicant/A-1 stating that they, A-4/Imran and the applicant(also Lara) succeeded in separating Godwin from A-7/Joe and A-2/Rudolf when the deceased Godwin took a knife and so did A-7/Joe and when they were about to assault each other, the applicant/A-1 intervened to stop A-7/Joe and deceased Godwin and in that process knife injury was caused to Jackson at the hands of deceased Godwin and blood started oozing out from his upper part of the right hand. As far as the death of the deceased is concerned, both of them namely, A-5/Prasad and A-6/Manjunath have stated, and very cleverly, that it is either A-2/Rudolf or A-7/Joe who stabbed the deceased Godwin with the knife. In other words, nobody knows for certain who stabbed deceased Godwin!

6. The learned Additional Sessions Judge in her Order dated 19-9-2005 observed that at this stage more credence had

to be given to the version of the eye witness as compared to the confessional statement of A-5/Prasad and A-6/Manjunath as their statements had to be tested on the merits, during the trial.

7. Ms. W. Coutinho, the learned Public Prosecutor has submitted that the prosecution may not even rely upon the said confessional statements of A-5/Ambadi and A-6/Manjunath. In my view, at the stage of considering the bail application, the statements of the accused whether recorded under one or the other provision of the Code of Criminal Procedure, 1973 had to be left out and the bail application decided on the basis of what the eye witnesses had stated regarding the incident. The accused were bound to save themselves, and if possible the co-accused as well, in the light of the allegation that it is all of them who were responsible for the murder of the deceased Godwin. If at all, the applicant/A-1 wanted to prevent A-2/Rudolf and A-7/Joe from going to the flat of Shri Ivon De Lemos, I do not see any reason why he could not prevent them first of all from going there at the very place where they had taken drinks!

8. In the above background, Mr. S. G. Bhobe, the learned Counsel for the applicant/A-1 submits that the applicant could have gone to a private doctor and got treatment for his injury and that in case the applicant/A-1 was involved in the murder of the deceased, the applicant/A-1 would not have gone to a public hospital like G.M.C and got treated there. He further submits that the complainant is silent as regards the injury suffered by the applicant/A-1 and the very fact that the applicant/A-1 chose to go to a public hospital shows the state of mind of the applicant/A-1 that he was not involved in the incident of murder of the deceased Godwin.

9. I am not impressed with the submissions of the learned Counsel Mr. Bhobe. The applicant/A-1 was not a novice to crime and it is quite probable that he had no other option then to go to G.M.C. for a private practitioner might have not treated him for the injury suffered. There is no doubt that prosecution is required to explain the injuries on the accused but there is no such rule of universal application applicable in all situations. It is quite probable to assume at this stage that the

said injury on the applicant/A-1 might have been received by him in the fury of the attack either from the co-accused or from the deceased.

10. The post mortem report shows that the deceased had as many as 26 injuries including a stab penetrating injury on the right areolar aspect of the breast perforated twice and including an injury by a fork, as pointed out on behalf of the applicant. The first informant who is only the eye witness has directly implicated the applicant/A-1 as having seen by him entering the kitchen, bringing a kitchen fork and then assaulting the deceased Godwin with the said fork. It is to be noted that the deceased Godwin had filed another complaint against the applicant/A-1 previously under Section 435 I.P.C. on the allegation that the applicant/A-1 had set fire to his bike No.GDD 8906 and in such a situation what the other accused have stated that the applicant/A-1 had gone to separate the fight appears to be beyond imagination.

11. As can be seen from the said complaint filed by the deceased Godwin which was registered as Crime No.221/2004

under Section 435 r/w 34 I.P.C., it appears that the deceased Godwin was earlier threatened. The applicant/A-1 has about five crimes registered against him previously including the said Crime No.221/2004 under Section 435 r/w 34 I.P.C. If, the deceased Godwin himself was under the threat of the applicant/A-1, it appears that it is quite probable that in the event the applicant/A-1 is admitted to bail the possibility of the only witness of the prosecution being threatened could not be ruled out.

12. The First Information Report of Shri Ivon De Lemos directly implicates the applicant/A-1 in the murder of the deceased. The offence committed by the applicant/A-1 appears to be serious and in such a situation the Court is bound to presume that no amount of bail will secure the presence of applicant/A-1 at the trial in the event he is released on bail. The facts also show that probability of the applicant/A-1, threatening the only witness of the prosecution cannot be ruled out, considering criminal background of the applicant/A-1.

13. In the light of the above, in my view, this is not a fit

case to grant bail to the applicant/A-1. The application is hereby dismissed.

N. A. BRITTO, J

RD